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IN THE

Supreme Court of the United States

OCTOBER TERM, 1971.

No. 71-1549

FREDERIKA BLANKNER,
Petitioner,

vs.

CITY OF CHICAGO, A MUNICIPAL CORPORATION,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS.

BRIEF FOR RESPONDENT CITY OF CHICAGO IN OPPOSITION.

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THE GUNTHORP-WARREN PRINTING COMPANY, CHICAGO 56

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Preliminary Statement.

The petitioner has filed, in addition to the petition for writ of certiorari, a notice of appeal. Also, the cover of the petition refers to an "Appeal from the Supreme Court of Illinois." Because, however, the petition, at page 2, invokes this Court's jurisdiction only under 28 U. S. C., section 1257(3), the City of Chicago will file only this answer to the petition, and will not file a motion to dismiss or affirm. Nevertheless, while the argument presented will answer the petition in the context of Rule 19(1)(a) of this Court, the same argument may be considered responsive to Rule 16(1)(b) and (c), as if the matter were being brought before the Court on appeal.

It should also be noted that while rehearing was denied by the Illinois Supreme Court on January 14, 1972, Mr. Justice Rehnquist extended the time within which to petition to May 12, 1972, and then to May 25, 1972, in orders entered, respectively, April 4, 1972, and May 4, 1972.

REASONS FOR DENYING THE WRIT.

The Supreme Court of Illinois Correctly Applied Principles of the Law of Eminent Domain Which Have Been Well-Settled by This Court.

Petitioner's argument, raised for the first time in this Court, that "The resolution of the Urban Renewal Board, and the ordinance of the City Council constitute a Bill of Attainder" (Pet., p. 11), is wholly without merit. Somewhat related to this argument and equally without merit is one to the effect that, in a suit for condemnation, the "burden of proof" is unconstitutionally upon the property owner to show that the area of condemnation is not slum and blighted (Pet., p. 7).

Cummings v. *Missouri*, 4 Wall. 277, cited by the petitioner, defines a bill of attainder (referred to, where the penalty is less than death, as a bill of pains and penalties):

> "Within the meaning of the Constitution, bills of attainder include bills of pains and penalties. In these cases the legislative body, in addition to its legitimate functions, exercises the powers and office of judge; it assumes, in the language of the text books, judicial magistracy; it pronounces upon the guilt of the party, without any of the forms or safeguards of trial; it determines whether conformable to the rules of evidence or otherwise; and it fixes the degree of punishment in accordance with its own notions of the enormity of the offense." (4 Wall. at 323.)

In the *Cummings* case, a Roman Catholic priest was indicted and convicted of teaching and preaching without

first taking a state-required oath which effectively disqualified former Confederate soldiers. The priest was fined $500 and jailed until payment.

Similarly, in *United States* v. *Brown*, 381 U. S. 437, also cited by petitioner, this Court described an anti-subversive oath as a bill of attainder for the following reasons:

> "The statute does not set forth a generally applicable rule decreeing that any person who commits certain acts or possesses certain characteristics (acts and characteristics which, in Congress' view make them likely to initiate political strikes) shall not hold union office, and leave to courts and juries the job of deciding what persons have committed the specified characteristics. Instead, it designates in no uncertain terms the persons who possess the feared characteristics and therefore cannot hold union office without incurring criminal liability—members of the Communist Party." (381 U. S. at 450.)

Neither case is applicable to the petitioner's situation. The legislative determination that an area is slum and blighted is not a finding of guilt against any person or class of persons. Nor does the determination, of itself, "take" any property. The designation simply makes findings of fact that the courts will recognize as establishing a *prima facie* case. In the suit for condemnation, the property owner has, of course, a complete opportunity to attack the *prima facie* case. The legislature, consequently does not assume the judicial function. The same constitution which proscribes bills of attainder also provides for the exercise of the power of eminent domain. Petitioner does not aid analysis by confusing the two.

Petitioner's contention that in a condemnation suit, the burden of proof is unfairly shifted to the property owner to prove that the area is not slum and blighted, is inaccurate. The burden of proof is upon the condemnor at all times; once, however, a *prima facie* case has been made, the owner

has a burden of going forward. The owner need not prove that the area is not slum and blighted, only that the condemnor's case is unsupportable. This burden is not different than the burden that any defendant or respondent has in litigation.

In support of her argument, petitioner cites *Speiser* v. *Randall*, 357 U. S. 513 (1958) and *First Unitarian Church* v. *County of Los Angeles*, 357 U. S. 545 (1958). In *Speiser*, the petitioners were applicants seeking a veteran's property tax exemption; they were required, under California law, to file an oath denying that they advocated the violent overthrow of the government. The law also placed upon the applicants the burden of showing that they were not persons who advocated overthrow. The Court observed:

> "It is, of course, familiar practice in the administration of a tax program for the taxpayer to carry the burden of introducing evidence to rebut the determination of the collector. [Citing cases.] But while the fairness of placing the burden of proof on the taxpayer in most circumstances is recognized, this Court has not hesitated to declare a summary tax-collection procedure a violation of due process when the purported tax was shown to be in reality a penalty for a crime. [Citing cases.] The underlying rationale of these cases is that where a person is to suffer a penalty for a crime he is entitled to greater procedural safeguards than when only the amount of his tax liability is in issue." (357 U. S. at 524-5.)

Thus *Speiser* and its companion case, *First Unitarian Church*, are not in point. There is no criminal liability at issue in this case. And the clear implication of the language quoted above is that, lacking a criminal liability, an administrative determination (supported in the instant case by a further legislative affirmance) is sufficient to place the burden of going forward, if not the burden of proof, upon the person opposing that determination.

The fact of the matter, of course, is that a procedure virtually identical to that employed in the instant case was approved in *Berman* v. *Parker*, 348 U. S. 26 (1954). The opinion there noted that

> "Once the Planning Commission adopts a plan and that plan is approved by the Commissioners, the Planning Commission certifies it to the Agency. . . . At that point, the Agency is authorized to acquire and assemble the real property in the area." (348 U. S. at 30.)

While petitioner does not expressly rely on the point, the charge is made, as though of some legal significance, that she was denied a hearing in the process leading to condemnation of her property. Thus, the petition asserts, at p. 6:

> "The resolution is then approved by the City Council. Once again, the property owners are not given notice, nor do the property owners have a right to a hearing before the City Council."

This statement is not true. As in most legislative bodies, when a resolution is presented to the Council, it is referred to committee, in this case the Committee on Planning and Housing. Before being referred back to the floor of the Council with a committee recommendation, a public hearing is held, with notice—and was so held on July 6, 1966, with respect to area in which petitioner's property is located. Notice of the hearing was published on June 24 and June 28, 1966, in *Chicago's American*, then a newspaper of general circulation. This hearing was, of course, in addition to the one afforded petitioner in the circuit court after the filing of the petition to condemn. And, with respect to the latter hearing, petitioner admits, at page 4 of the petition, that she *chose* not to introduce any evidence in support of her contention.

As a result, it is clear that the petition raises no questions of substance, either federal or non-federal, that have not

already—and repeatedly—been decided adversely to the petitioner's position; it is also clear that these decisions were applied in an utterly orthodox and correct manner in this matter by the Supreme Court of Illinois.

CONCLUSION.

For the foregoing reasons, it is respectfully requested that the petition for writ of certiorari to the Supreme Court of Illinois be denied.

Respectfully submitted,

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